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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)
)
1998 Biennial regulatory Review —)
Amendment of Parts 2, 25 and 68 of the)
Commission's Rules to Further Streamline)
the Equipment Authorization Process for)
Radio Frequency Equipment, Modify the)
Equipment Authorization Process for)
Telephone Terminal Equipment, Implement)
Mutual Recognition Agreements and Begin)
Implementation of the Global Mobile Personal)
Communications by Satellite (GMPCS))
Arrangements)

Gen. Docket No. 98-68

ORIGINAL

COMMENTS OF ITRON, INC.

Itron, Inc. ("Itron") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. Itron is the world leader in RF-based automatic meter reading systems used by gas, electric, and water utility companies.

DISCUSSION

In the NPRM, the Commission has asked for comment on proposals to allow for private equipment certification and to promote the increased use of mutual recognition agreements ("MRAs") for equipment authorization. Itron generally supports these proposals. One aspect of the NPRM, however, should be reconsidered. Although Itron supports the use of private "Telecommunication Certification Bodies" ("TCBs"), Itron urges the Commission to abandon its proposal to allow TCBs to perform equipment audits.

I. TCBs Should Be Allowed To Test And Certify Equipment.

As the Commission recognizes in the NPRM, the current equipment authorization and registration procedures impose significant, and sometimes unnecessary, burdens both upon equipment manufacturers and upon the Commission.

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The proposal outlined in the NPRM to allow TCBs to test and certify equipment will substantially reduce those burdens.

By expanding the options available to manufacturers for equipment testing and certification, the new rules will help to reduce the time required to bring new technologies to the market and speed the delivery of new services to the public. Moreover, the use of TCBs can be expected to reduce the number of applications filed with the Commission for equipment certification and, as a result, help to preserve Commission resources which may then be used for other, more sensitive and important tasks. Finally, as the Commission recognizes in the NPRM, the use of TCBs follows from, and is consistent with, the use of MRAs, which may allow TCBs overseas to certify that equipment meets U.S. technical standards.¹ Domestic manufacturers should have no less flexibility in equipment testing and authorization than their foreign competitors.

For all of these reasons, Itron supports the use of TCBs for equipment testing and certification. Further, because the use of MRAs will make it easier for manufacturers in the U.S. to market radio technologies abroad, Itron supports the Commission's efforts to implement the U.S./E.C. MRA and to promote the use of similar agreements with other foreign trading partners in the future.

II. The Commission Should Not Delegate Audit Authority To TCBs.

Although Itron generally supports the use of TCBs, it urges the Commission to abandon its proposal to allow or "require TCBs to periodically perform audits of equipment on the market that they have certified."² The Commission did not specify whether it envisioned that these audits would be performed in the field or at the TCBs' facilities, but in either case the proposal raises troubling questions that are best avoided.

Field audits by TCBs would implicate a host of concerns. Unlike equipment testing and certification, which will be accomplished under controlled conditions in testing laboratories, field audits necessarily involve a greater exercise of discretion and judgment by the technicians performing the tests. There is, therefore, an increased risk that the Commission's technical standards will be inconsistently applied, even when the tests are performed in the utmost good-faith.

¹ See NPRM ¶ 11.

² *Id.* ¶ 17(j).

In addition, however, because of the discretion that necessarily inheres in a field audit, the proposal to allow private parties to conduct field audits will, if adopted, create additional opportunities for deliberate abuse or manipulation of the testing process. Indeed, once private auditors are permitted to enter upon private property for the purpose of conducting equipment field audits, there is a wide range of anticompetitive behaviors beyond those related to the integrity of the certification process, including industrial espionage and sabotage, that may follow.

Although conducting audits at the TCBs' facilities rather than in the field could alleviate some of these concerns, it would still leave the TCBs in the position of acting in a quasi-official capacity by attempting to collect equipment for audit review. Moreover, because the standards for evaluating compliance in the context of an application (*i.e.*, whether the equipment satisfies the FCC limits) are different from the standards for evaluating compliance once an application has been granted (*i.e.*, whether the equipment performs within the normal manufacturing variation of the performance exhibited by the unit that was used in the application), ceding audit authority to the TCBs could give rise to inconsistencies and confusion in the manner in which "normal manufacturing variation" is determined.

Thus, although Itron does not oppose equipment audits when used properly to help ensure compliance with the Commission's technical standards, Itron suggests that such audits should continue to be conducted in the U.S. only by government personnel operating under the authority and oversight of the FCC. By retaining this authority, the Commission not only will protect against outright abuses by TCBs, it will also increase its ability to monitor the performance of TCBs and detect systemic problems in its certification program.

CONCLUSION

For the reasons set forth above, Itron supports the use of TCBs and the expanded use of MRAs, but opposes the suggestion that TCBs should be allowed to conduct equipment compliance audits.

Respectfully submitted,

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